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8 VIAVI SOLUTIONS INC.,
9 Plaintiff,
10 v.
11 PLATINUM OPTICS TECHNOLOGY
12 INC.,
Defendant.

Case No. [5:20-cv-05501-EJD](#)

**ORDER GRANTING MOTION FOR
RECONSIDERATION**

Re: Dkt. No. 137

14 Plaintiff Viavi Solutions Inc. (“Viavi”) brings this patent infringement suit against
15 Defendant Platinum Optics Technology Inc. (“PTOT”), alleging that PTOT has manufactured and
16 sold optical filters that infringe Viavi’s U.S. Patent Nos. 9,354,369 (“the ’369 patent”), 9,588,269
17 (“the ’269 patent”) and 10,222,526 (“the ’526 patent”). On May 11, 2021, the Court stayed the
18 action pending final resolution of the petitions for *inter partes* review (“IPR”) that PTOT filed
19 before the Patent Trials and Appeals Board (“PTAB”) challenging all but one of the asserted
20 claims from the patents-in-suit. Dkt. No. 95. On October 20, 2021, the Court denied Viavi’s
21 motion to lift the stay. Dkt. No. 121. Now before the Court is Viavi’s motion to reconsider the
22 Court’s October 20, 2021 order denying Viavi’s motion to lift the stay on this action. Dkt. No.
23 137.

24 The Court finds this matter is appropriate for resolution without oral argument. Civ. L.R.
25 7-1(b). Having considered the parties’ moving papers, the Court GRANTS the motion for
26 reconsideration. The Court finds that the factual circumstances concerning the status of the three
27 IPRs underlying its previous order denying the motion to lift the stay have changed, such that a
28 Case No.: [5:20-cv-05501-EJD](#)
ORDER GRANTING MOT. FOR RECON.

1 stay will not longer simplify the issues in question or trial of the case. *Canady v. Erbe*
2 *Elektromedizin GmbH*, 271 F. Supp. 2d 64, 75 (D.D.C. 2002); *PersonalWeb, LLC v. Apple Inc.*,
3 69 F. Supp. 3d 1022, 1025 (N.D. Cal. 2014) (describing three factors for considering a stay
4 pending IPR). While the question of whether Viavi and PTOT compete against one another in the
5 United States remains open, that open question alone does not justify maintaining the stay.

6 Viavi previously represented to the Court that if IPR were instituted on the '369 patent, it
7 would dismiss all its claims concerning that patent. Dkt. No. 102 at 1, 3 ("Viavi *will* dismiss the
8 '369 patent from this case if the IPR is instituted.") (emphasis added). The Court will hold Viavi
9 to its word. Viavi shall dismiss all claims asserting the '369 patent by **March 7, 2022**. Following
10 that dismissal, the Court shall lift the stay and set a schedule for further proceedings.

11 **IT IS SO ORDERED.**

12 Dated: March 2, 2022

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15 EDWARD J. DAVILA
16 United States District Judge

United States District Court
Northern District of California